

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**DONALD L. FLENKER**

Claimant

VS.

**LANTER COMPANY**

Respondent

Self-Insured

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Docket No. 196,547

**ORDER**

Claimant appeals from a Preliminary Hearing Order of March 14, 1995, wherein Administrative Law Judge Robert H. Foerschler denied claimant benefits finding claimant had failed to prove accidental injury arising out of and in the course of his employment.

**ISSUES**

Whether claimant met with personal injury by accident arising out of and in the course of his employment on the date alleged.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

A finding on the issue of whether claimant suffered accidental injury arising out of and in the course of employment is one properly before the Appeals Board on appeal from a preliminary hearing and, as such, the Appeals Boards has jurisdiction to consider this matter. K.S.A. 44-534a.

Claimant alleges injury to his left shoulder on November 13, 1994, while lifting a pork loin box from a Hormel truck. Respondent disputes this claim as this injury was not

witnessed by a co-worker working in the same truck. There was also evidence contained within the record to indicate claimant had been on a weekend hunting trip prior to reporting to work Sunday evening and had, in fact, complained of pain in his shoulder as a result of carrying his shotgun on this hunting trip.

In workers compensation matters, it is the claimant's burden to establish his right to an award by proving all of the various conditions upon which his right to a recovery depends by a preponderance of the credible evidence. See K.S.A. 44-501 and K.S.A. 44-508(g). The Administrative Law Judge found claimant had failed in meeting his burden of proving an accidental injury arising out of and in the course of his employment and benefits in the form of medical treatment and temporary total disability were denied. The Appeals Board finds, after a review of the entire file, that the Order of Administrative Law Judge Robert H. Foerschler is correct and claimant has failed to show by a preponderance of the credible evidence accidental injury arising out of and in the course of his employment.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Robert H. Foerschler on March 14, 1995, is affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July, 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Donald L. Flenker, Pro Se  
Bill W. Richerson, Kansas City, Missouri  
Robert H. Foerschler, Administrative Law Judge  
David A. Shufelt, Acting Director

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**NUNC PRO TUNC**

The Order of the Workers Compensatino Appeals Board of July 13, 1995, in the above matter is modified as follows:

**ORDER**

Claimant appeals from a Preliminary Hearing Order of March 14, 1995, wherein Administrative Law Judge Robert H. Foerschler denied claimant benefits finding claimant had failed to prove accidental injury arising out of and in the course of his employment.

**ISSUES**

Whether claimant met with personal injury by accident arising out of and in the course of his employment on the date alleged.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

A finding on the issue of whether claimant suffered accidental injury arising out of and in the course of employment is one properly before the Appeals Board on appeal from a preliminary hearing and, as such, the Appeals Boards has jurisdiction to consider this matter. K.S.A. 44-534a.

Claimant alleges injury to his back and left hip on November 13, 1994, while lifting a pork loin box from a Hormel truck. Respondent disputes this claim as this injury was not witnessed by a co-worker working in the same truck. There was also evidence contained within the record to indicate claimant had been on a weekend hunting trip prior to reporting to work Sunday evening and had, in fact, complained of pain as a result of carrying his shotgun on this hunting trip.

In workers compensation matters, it is the claimant's burden to establish his right to an award by proving all of the various conditions upon which his right to a recovery depends by a preponderance of the credible evidence. See K.S.A. 44-501 and K.S.A. 44-508(g). The Administrative Law Judge found claimant had failed in meeting his burden of proving an accidental injury arising out of and in the course of his employment and benefits in the form of medical treatment and temporary total disability were denied. The Appeals Board finds, after a review of the entire file, that the Order of Administrative Law Judge Robert H. Foerschler is correct and claimant has failed to show by a preponderance of the credible evidence accidental injury arising out of and in the course of his employment.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Robert H. Foerschler on March 14, 1995, is affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July, 1995.

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